

**Office of Capital and Forensic Writs  
Summary of Recommendations - House**

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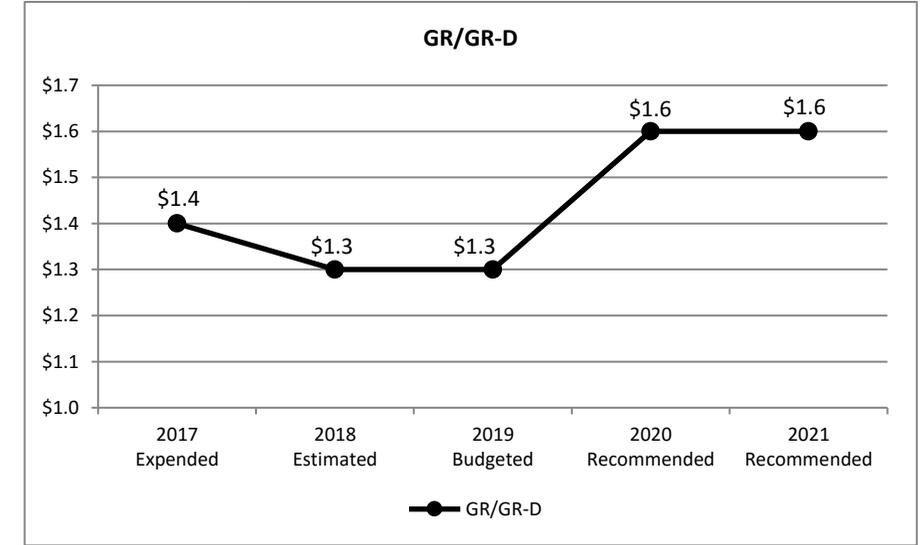
Benjamin Wolff, Director

Darren Albrecht, LBB Analyst

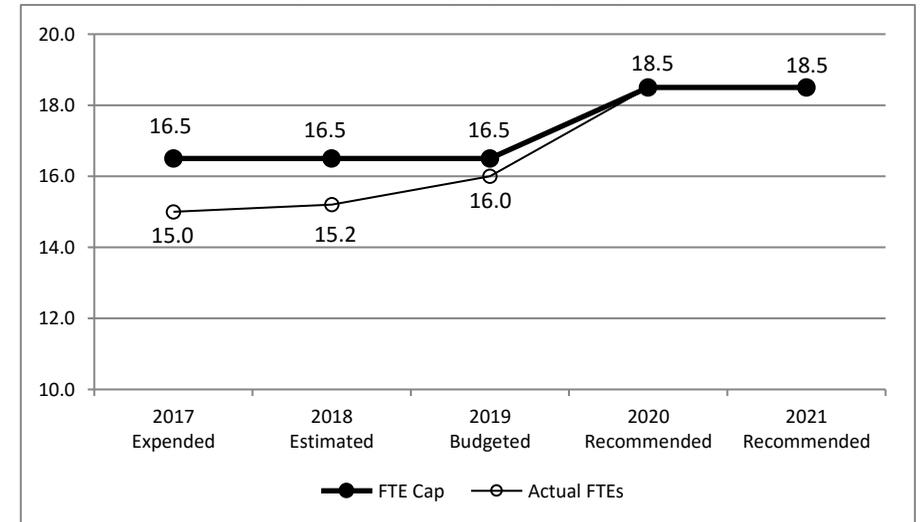
| <b>Method of Financing</b>    | <b>2018-19<br/>Base</b> | <b>2020-21<br/>Recommended</b> | <b>Biennial<br/>Change (\$)</b> | <b>Biennial<br/>Change (%)</b> |
|-------------------------------|-------------------------|--------------------------------|---------------------------------|--------------------------------|
| General Revenue Funds         | \$0                     | \$0                            | \$0                             | 0.0%                           |
| GR Dedicated Funds            | \$2,675,171             | \$3,175,171                    | \$500,000                       | 18.7%                          |
| <i>Total GR-Related Funds</i> | <i>\$2,675,171</i>      | <i>\$3,175,171</i>             | <i>\$500,000</i>                | <i>18.7%</i>                   |
| Federal Funds                 | \$0                     | \$0                            | \$0                             | 0.0%                           |
| Other                         | \$0                     | \$0                            | \$0                             | 0.0%                           |
| <b>All Funds</b>              | <b>\$2,675,171</b>      | <b>\$3,175,171</b>             | <b>\$500,000</b>                | <b>18.7%</b>                   |

|      | <b>FY 2019<br/>Budgeted</b> | <b>FY 2021<br/>Recommended</b> | <b>Biennial<br/>Change</b> | <b>Percent<br/>Change</b> |
|------|-----------------------------|--------------------------------|----------------------------|---------------------------|
| FTEs | 16.0                        | 18.5                           | 2.5                        | 15.6%                     |

**Historical Funding Levels (Millions)**



**Historical Full-Time-Equivalent Employees (FTEs)**



The bill pattern for this agency (2020-21 Recommended) represents an estimated 100% of the agency's estimated total available funds for the 2020-21 biennium.

**Office of Capital and Forensic Writs  
Summary of Funding Changes and Recommendations - House**

| Funding Changes and Recommendations for the 2020-21 Biennium compared to the 2018-19 Base Spending Level (in millions)               | General Revenue                                                                                                                                                                                                                                                                                                                                                                   | GR-Dedicated | Federal Funds | Other Funds  | All Funds    | Strategy in Appendix A |
|--------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------|---------------|--------------|--------------|------------------------|
| <i>Funding Changes and Recommendations (each issue is explained in Section 3 and additional details are provided in Appendix A):</i> |                                                                                                                                                                                                                                                                                                                                                                                   |              |               |              |              |                        |
| A)                                                                                                                                   | General Revenue-Dedicated Fair Defense Account No. 5073 funding and the authority to hire two attorney positions to provide expanded duties representing noncapital inmates in cases where questionable science contributed to a conviction in alignment with requirements established by the Eighty-fourth Legislature (See also, Selected Fiscal and Policy Issues - House #1). |              |               |              |              |                        |
|                                                                                                                                      | \$0.0                                                                                                                                                                                                                                                                                                                                                                             | \$0.5        | \$0.0         | \$0.0        | \$0.5        | A.1.1                  |
| <b>TOTAL Funding Changes and Recommendations (in millions)</b>                                                                       |                                                                                                                                                                                                                                                                                                                                                                                   |              |               |              |              |                        |
|                                                                                                                                      | <b>\$0.0</b>                                                                                                                                                                                                                                                                                                                                                                      | <b>\$0.5</b> | <b>\$0.0</b>  | <b>\$0.0</b> | <b>\$0.5</b> | As Listed              |
| <i>Funding Increases</i>                                                                                                             |                                                                                                                                                                                                                                                                                                                                                                                   |              |               |              |              |                        |
|                                                                                                                                      | \$0.0                                                                                                                                                                                                                                                                                                                                                                             | \$0.5        | \$0.0         | \$0.0        | \$0.5        | As Listed              |
| <i>Funding Decreases</i>                                                                                                             |                                                                                                                                                                                                                                                                                                                                                                                   |              |               |              |              |                        |
|                                                                                                                                      | \$0.0                                                                                                                                                                                                                                                                                                                                                                             | \$0.0        | \$0.0         | \$0.0        | \$0.0        | As Listed              |

**Office of Capital and Forensic Writs  
Selected Fiscal and Policy Issues - House**

1. **Forensic Writs in Noncapital Cases.** Recommendations include \$0.5 million in General Revenue-Dedicated Fair Defense Account No. 5073 (GR-D Fund 5073) funding with authority to add 2.0 FTEs (two attorneys positions) to expand the agency's jurisdiction as allowed by the enactment of Senate Bill 1743, Eighty-fourth Legislature, Regular Session.

Enactment of Senate Bill 1743 expanded the agency's responsibilities to include representing noncapital inmates in cases where questionable forensic science contributed to the conviction. The fiscal note for the legislation anticipated additional costs to hire two attorneys in fiscal year 2018 and an additional attorney in fiscal year 2019 with additional costs for professional services, travel, equipment, and payroll contributions (total cost of \$403,718 in GR-D Fund 5073 excluding benefits) to manage additional cases.

Recommendations do not include \$82,875 in GR-D Fund 5073 funding to add a third attorney position in fiscal year 2021 (See also, Items Not Included in Recommendations – House #3).

2. **One-Time Funding Repurposed.** Recommendations retain \$44,369 in GR-D Fund 5073 funding from a one-time expenditure in 2018 for the build out of Suite 490E in the Stephen F. Austin Building, which was not being utilized by the Texas Real Estate Commission, to expand office space for agency staff. The agency elected to utilize staff salary savings resulting from turnover to fund the one-time expenditure and reports its intention to prioritize filling its vacant positions in the 2020-21 biennium. Recommendations re-purpose the funding in 2020-21 for compensating professional witnesses and to pay for all attorney positions to travel to attend hearings.

The agency reports that it has occupied the same office space in the Stephan F. Austin Building since the agency was established in 2010. Since then, the Legislature has appropriated additional FTEs to the agency due to increased workload but has not provided funding to expand its workspace to accommodate additional staff. The agency reports, through exit interviews with departing staff, that workplace condition is one factor contributing to staff attrition.

3. **Staffing Levels.** Recommendations continue FTEs at 2018-19 appropriated levels for representing capital inmates. The agency reports that the average number of co-counseled cases for each attorney position was 8.5 in 2018 and that the national standard used by capital post-conviction offices in Texas and nationwide is 4 to 6 cases per attorney position. The agency also reports an attrition rate of 27 percent among attorneys and 38 percent amount mitigation specialist/investigators since the agency was established (See also, Items Not Included in Recommendations - House #1).

Office of Capital and Forensic Writs  
Rider Highlights - House

**New Riders**

2. **Rider 2, Noncapital Inmate Representation** – Recommendations add a rider to identify \$250,000 each fiscal year in General Revenue-Dedicated Fair Defense Account No. 5073 funding and 2.0 FTEs to be utilized for the purpose of providing representation for noncapital inmates in cases where questionable science contributed to a conviction.

**Office of Capital and Forensic Writs  
Items Not Included in Recommendations - House**

|  | 2020-21 Biennial Total |           |      | Information Technology Involved? | Contracting Involved? | Estimated Continued Cost 2022-23 |
|--|------------------------|-----------|------|----------------------------------|-----------------------|----------------------------------|
|  | GR & GR-D              | All Funds | FTEs |                                  |                       |                                  |

**Agency Exceptional Items Not Included (in agency priority order)**

|    |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |             |             |     |    |     |             |
|----|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------|-------------|-----|----|-----|-------------|
| 1) | <p>General Revenue-Dedicated Fair Defense Account No. 5073 to fund:</p> <p>(A) increase salaries for eight attorney positions from \$70,000 to \$85,000 in FY2020 and \$85,000 to \$100,000 in FY2021, five mitigation specialists from \$55,000 to \$62,500 in FY2020 and \$62,500 to \$70,000 in FY2021 (\$472,500),</p> <p>(B) add two attorney positions at \$85,000 in FY2020 and \$100,000 in FY2021 and one mitigation specialist position at \$62,500 in FY2020 and \$70,000 in FY2021 (\$502,500); and</p> <p>(C) increase for travel and other operating expenses (\$79,425).</p> <p>The agency anticipates out year estimated costs to increase by 5 percent each year from 2021 requested levels.</p> | \$1,054,425 | \$1,054,425 | 3.0 | No | No  | \$1,330,151 |
| 2) | <p>General Revenue-Dedicated Fair Defense Account No. 5073 to fund a new Deputy Director position (\$110,000 each year), a new Staff Services Officer position (\$60,000 each year), and to increase funding for travel, litigation expenses, and equipment (\$150,850 in FY2020 and \$128,850 in FY2021). The agency anticipates that salaries for the Deputy Director and Staff Services Officer positions will increase by 5 percent each year in 2022-23</p>                                                                                                                                                                                                                                                  | \$619,700   | \$619,700   | 2.0 | No | Yes | \$371,950   |
| 3) | <p>General Revenue-Dedicated Fair Defense Account No. 5073 to fund a third attorney position in fiscal year 2021.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | \$82,875    | \$82,875    | 1.0 | No | No  | \$85,000    |

**TOTAL Items Not Included in Recommendations**

**\$1,757,000**

**\$1,757,000**

**6.0**

**\$1,787,101**

**Office of Capital and Forensic Writs  
Appendices - House**

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\* Appendix is not included - no significant information to report

\*\* Information is included in the presentation section of the packet

**Office of Capital and Forensic Writs  
Funding Changes and Recommendations - House, by Strategy -- ALL FUNDS**

| Strategy/Goal                                        | 2018-19<br>Base    | 2020-21<br>Recommended | Biennial<br>Change | %<br>Change  | Comments                                                                                                                                                                                                                                                                                                                                                                         |
|------------------------------------------------------|--------------------|------------------------|--------------------|--------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| POST-CONVICTION REPRESENTATION A.1.1                 | \$2,675,171        | \$3,175,171            | \$500,000          | 18.7%        | Recommendations reflect an increase in General Revenue-Dedicated Fair Defense Account No. 5073 to fund two attorney positions and expand the agency's duties to include representing noncapital inmates in cases where questionable forensic science contributed to a conviction in alignment with requirements established in Senate Bill 1743, Eighty-fourth, Regular Session. |
| <b>Total, Goal A, POST-CONVICTION REPRESENTATION</b> | <b>\$2,675,171</b> | <b>\$3,175,171</b>     | <b>\$500,000</b>   | <b>18.7%</b> |                                                                                                                                                                                                                                                                                                                                                                                  |
| <b>Grand Total, All Strategies</b>                   | <b>\$2,675,171</b> | <b>\$3,175,171</b>     | <b>\$500,000</b>   | <b>18.7%</b> |                                                                                                                                                                                                                                                                                                                                                                                  |

**Office of Capital and Forensic Writs  
FTE Highlights - House**

| <b>Full-Time-Equivalent Positions</b> | <b>Expended<br/>2017</b> | <b>Estimated<br/>2018</b> | <b>Budgeted<br/>2019</b> | <b>Recommended<br/>2020</b> | <b>Recommended<br/>2021</b> |
|---------------------------------------|--------------------------|---------------------------|--------------------------|-----------------------------|-----------------------------|
| Cap                                   | 16.5                     | 16.5                      | 16.5                     | 18.5                        | 18.5                        |
| Actual/Budgeted                       | 15.0                     | 15.2                      | 16.0                     | NA                          | NA                          |

| <b>Schedule of Exempt Positions (Cap)</b> |           |           |           |           |           |
|-------------------------------------------|-----------|-----------|-----------|-----------|-----------|
| Executive Director                        | \$137,274 | \$137,274 | \$137,274 | \$137,274 | \$137,274 |

Notes:

a) The State Auditor's Office, Executive Compensation at State Agencies (Report 18-705, August 2018), indicates a market average of \$156,326 for the Executive Director position at OCFW. The report also recommends changing the salary classification group from 3 to 4. The agency is not requesting an increase in authority or funds.

**Office of Capital and Forensic Writs  
Performance Measure Highlights - House**

|                                                                                                                                                                                                                                                                                                                            | <b>Expended<br/>2017</b> | <b>Estimated<br/>2018</b> | <b>Budgeted<br/>2019</b> | <b>Recommended<br/>2020</b> | <b>Recommended<br/>2021</b> |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------|---------------------------|--------------------------|-----------------------------|-----------------------------|
| <ul style="list-style-type: none"> <li>• <i>Number of Writ Applications for Which Hearings are Granted by a Trial Court</i></li> </ul> <p><i>Measure Explanation: The number of writ applications filed that persuade the convicting court to receive evidence to resolve factual issues by the application.</i></p>       | 24                       | 20                        | 18                       | 18                          | 18                          |
| <ul style="list-style-type: none"> <li>• <i>Number of New Cases Accepted</i></li> </ul> <p><i>Measure Explanation: The number of clients represented, pursuant to Code of Criminal Procedure Articles 11.071, 11.073, 46.05, 64, and related proceedings, by the OCFW over the course of a given reporting period.</i></p> | 3                        | 3                         | 3                        | 3                           | 3                           |
| <ul style="list-style-type: none"> <li>• <i>Number of Cases Pending</i></li> </ul> <p><i>Measure Explanation: The number of cases pending by the OCFW at the end of a fiscal year.</i></p>                                                                                                                                 | 46                       | 45                        | 38                       | 35                          | 35                          |

**Office of Capital and Forensic Writs**  
**Summary of Ten Percent Biennial Base Reduction Options Recommendations - House**

| Priority                            | Item                   | Description/Impact                                                                                             | Biennial Reduction Amounts |                  |            | Potential Revenue Loss | Reduction as % of Program GR/GR-D Total | Program GR/GR-D Total | Included in Introduced Bill? |
|-------------------------------------|------------------------|----------------------------------------------------------------------------------------------------------------|----------------------------|------------------|------------|------------------------|-----------------------------------------|-----------------------|------------------------------|
|                                     |                        |                                                                                                                | GR & GR-D                  | All Funds        | FTEs       |                        |                                         |                       |                              |
| 1)                                  | Reduction in Workforce | This approach would result in the loss of one half of an attorney position (0.5 FTE).                          | \$66,878                   | \$66,878         | 0.5        | \$0                    | 2.5%                                    | \$2,675,172           | No                           |
| 2)                                  | Reduction in Workforce | This approach would result in the loss of an additional one half of an attorney position (0.5 FTE).            | \$66,879                   | \$66,879         | 0.5        | \$0                    | 2.5%                                    | \$2,675,172           | No                           |
| 3)                                  | Reduction in Travel    | This approach would reduce travel funding and limit necessary travel on cases more than 150 miles from Austin. | \$66,880                   | \$66,880         | 0.0        | \$0                    | 2.5%                                    | \$2,675,172           | No                           |
| 4)                                  | Reduction in Travel    | This approach would reduce travel funding and limit necessary travel on cases more than 150 miles from Austin. | \$66,880                   | \$66,880         | 0.0        | \$0                    | 2.5%                                    | \$2,675,172           | No                           |
| <b>TOTAL, 10% Reduction Options</b> |                        |                                                                                                                | <b>\$267,517</b>           | <b>\$267,517</b> | <b>1.0</b> | <b>\$0</b>             |                                         |                       |                              |